

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/01/2003

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE A.K. RAJAN

CRL.A. NO.932 OF 1998

1. Ramamurthy alias Ramu
2. Nataraj ..Appellants

-Vs-

Inspector of Police,
Muthaliarpur Police Station,
Pondicherry. ..Respondent

Appeal against judgment dated 30-6-1998 in S.C. No.65 of 1994 on the file of the III Additional Sessions Court, Pondicherry.

!For first appellant (A-2): Mr. R.Sankarasubbu

^For second appellant(A-3): Mr. R.Ramanlal

For respondent : Mr .A.P.Suryaprakasam,
Addl.P.P. (Pondy)

:JUDGMENT

(The Judgment of the Court was delivered by
M. Karpagavinayagam,J.)

The appellants are A-2 Ramamurthy and A-3 Natarajan. They were convicted for the offences under Sections 341 and 302 read with 34 I.P.C. Challenging the same, the appellants have filed this appeal.

2. Originally, there were four accused. During the pendency of trial, A-1 died. So, the case in respect of A-1 got abated and the trial was conducted against A-2 to A-4. Ultimately, the trial Court acquitted A-4 and convicted A-2 and A-3 alone.

3. The case of the prosecution in brief is as follows:-

(a) On the instruction given by P.W.17, Sub-Inspector of Police, attached to Mudaliarpur Police Station, P.W.1 Karunanithi (PC 1089), P.W.2 Iyanar (PC 1228) and P.W.16 Subbarayan (PC 468) went to Ganguli workshop to enquire into the complaint given by the Manager that there was a commotion

inside the workshop on 29-1-1993 evening. When they went to the workshop, they were informed by the Manager that some people came there and created nuisance in front of the workshop, and thereafter, they went away. Therefore, the Police Constables, after making some enquiry with the Manager and others, finding that no person who created commotion was available, were returning to the Police Station.

(b) At about 6.30 p.m., they were coming alone along with the Cuddalore Road, Marapalam side. At that time, some people informed them that one Kaliyamoorthy was stabbed by some persons. Immediately, they rushed to the scene of occurrence. They saw that the said Kaliyamoorthy was being stabbed by eight accused persons. When they approached the spot, the accused persons, on seeing the Police coming in uniform, ran away from the scene. A-1 Kuppan got into the motor bike and sped away. The others were running

helter-skelter. P.W.1 and P.W.3, the Constables were chasing A-2 Ramamurthy, who was wearing red shirt. Ultimately, they caught him with a knife carrying in his hand.

(c) On interrogation, A-2 Ramamurthy gave a statement to P.W.1 that due to enmity between A-1 Kuppan and the victim Kaliyamoorthy, A-1 brought all the accused including A-2 to the spot and instigated them to attack the victim and so, they attacked him.

(d) In the meantime, P.W.16, another Constable caught A-3 Natarajan after a hot chase for a considerable distance. P.W.2 Ayyanar, another Constable, finding that the victim with bleeding injuries was gasping for life, arranged for an Ambulance for taking the victim to the Hospital. On the way, P.W.2 stepped into the Police Station and informed P.W.17 Sub-Inspector of Police about the incident and obtained requisition to the Hospital for treatment to the victim.

(e) Thereafter, P.Ws.1 and 3 came to the Police Station along with A-2 Ramamurthy and produced him to P.W.17 Sub-Inspector of Police with the blood stained knife M.O.8. P.W.1 gave Ex.P-1 special report to P.W.17. P.W.16 who caught A-3 Natarajan, produced him in the Police Station.

(f) In the meantime, P.W.17 received information from P.W.14 Doctor that the victim died. With reference to the incident and death of the deceased, P.W.2 came to the Police Station and gave Ex.P-1 special report. P.W.17 prepared Ex.P-23 F.I.R. and sent the complaint and F.I.R. to the Court. He also sent the message to P.W.18 Inspector of Police. On receipt of the message, the case was registered by P.W.18. Ex.P-1 special report was given by P.W.17 in Cr.No.8 of 1993.

(g) P.W.18 Inspector of Police went to the scene of occurrence and prepared observation mahazar and rough sketch. He also recovered blood stained earth and sample earth and then he came to the Station and examined the accused. On 30-1-1993, P.W.18 received information about A-4 and went to KulandaiKeerapalahyam and arrested him. On the confession of A-4, the knife

M.O.6 was recovered. Then, A-2 to A-4 were sent for remand.

(h) P.W.18 conducted inquest and examined P.Ws.5,10 and others. Ex.P-6 is the inquest report. He sent requisition to P.W.15 Doctor to conduct post-mortem. P.W.15 Doctor conducted post-mortem on 30-1-1993, found 24 injuries and gave an opinion in Ex.P-17 post-mortem certificate that the deceased died of shock and haemorrhage due to penetrating injuries on the chest. On 1-2-1993, P.W.18 arrested A-1 and obtained a statement.

(i) On 2-2-1993, a requisition was sent to the Chief Judicial Magistrate to conduct identification parade for identifying the accused 1 to 4 by the witnesses. Accordingly, on 10-2-1993, P.W.13 Judicial First Class Magistrate conducted identification parade and prepared identification proceedings in Ex.P-14.

(j) After observing all the other formalities, P.W.18 filed the charge sheet against A-1 to A-4 alone, under Sections 341 and 302 read with 34 I.P.C. and requested the Court to drop the names of the other four accused.

4. During the course of trial, P.Ws.1 to 18 were examined, Exs.P-1 to P-28 were filed and M.Os.1 to 8 were marked.

5. When A-2 to A-4 were questioned under Section 313 Cr.P.C., they pleaded innocence.

6. On considering the entire materials, the trial Court ultimately convicted A-2 and 3 alone and acquitted A-4. Hence, this appeal by the appellants/A-2 and 3.

7. Mr.Sankarasubbu, learned counsel appearing for A-2 would take us through the entire evidence and contend that the materials available on record would suffer from various infirmities and as such, the conviction imposed on the appellants is not legal.

8. Mr.Ramanlal, learned counsel appearing for A-3 would also take us through the relevant portion of the evidence and contend that A-3 has not been identified by any one of the witnesses and recovery of M. O.7 knife from A-3 is doubtful, in view of contradictory evidence given by P.W.16, who arrested A-3 and as such, A-3 is liable to be acquitted.

9. In reply to the above submissions, Mr.Suryaprakasam, learned Additional Public Prosecutor (Pondicherry), in justification of the reasonings given by the trial Court, would contend that materials available on record are reliable and sufficient to base the conviction.

10. We have carefully considered the rival contentions urged by learned counsel for the parties.

11. It is shocking to note that the brutal murder was committed by

above eight persons in the middle of the main road at about 6.30 p.m. on 29-1-1993. Unfortunately, the Constables, namely P.Ws.1,2,3 and 16, who happened to see the occurrence, were able to catch only two accused with blood stained knives.

12. The question to be considered in this case is as to whether the evidence adduced by prosecution would be sufficient to hold that the accused persons, who have been convicted by the trial Court, could be found guilty of the offences under Sections 341 and 302 read with 34 I.P.C.

13. The main evidence relied upon by the prosecution is that of the Police Constables—P.Ws.1,2,3 and 16, who saw the occurrence. Immediately on seeing the Police Constables, the accused ran away in all directions. P.Ws.1 and 3 caught A-2 with the knife. P.W.16 caught A-3 with the knife. Both were produced before P.W.17 Sub-Inspector of Police, immediately after arrest.

14. Unfortunately, the case of the prosecution as projected in Ex.P-1 that all the witnesses saw the accused stabbing the deceased, has not been supported by the evidence of P.Ws.1 and 2, who are the authors of Exs.P-1 and P-2 respectively. There is a specific mention in Ex.P-1, which is the earliest document, which has been treated as complaint by P.W.1, that P.W.1 saw the deceased being stabbed by eight accused persons. But unfortunately, P.Ws.1 and 3 did not state in the deposition that they have seen the stabbing incident. Furthermore, P.W.1 in his cross-examination would admit that he gave the report only against four persons. When he was further questioned in cross-examination, he stated that in his report, he mentioned about the involvement of six persons. But, in Ex.P-1, P.W.1 mentioned the names of eight persons as if all of them stabbed the deceased.

15. P.W.3, another Constable who caught A-2 and produced him before Police Station, would merely state that only four persons ran away from the scene of occurrence. This is also against the contents of Ex.P-1. Even though P.W.3 would state that four persons ran away from the place of occurrence, P.W.1, in chief examination, would simply state that only one person ran away from the scene and he was ultimately caught by them. Thus, it is clear that the initial case of the prosecution as projected through Ex.P-1 by P.W.1, has been completely given up by P.Ws.1 and 3 when they deposed evidence in the Court.

16. There is no reason as to why P.Ws.1 and 3 have to give up their original stand. When they took a different stand, there is no reason as to why P.Ws.1 and 3 who did not support Ex.P-1, have not been treated as hostile. Furthermore, it is noticed that in the charge sheet, it is specifically mentioned that A-1 to A-4 alone committed the offence of murder. Even though P.W.18 Inspector of Police would state in the evidence that he mentioned in the charge sheet requesting the Court to drop the proceedings in respect of the other four accused mentioned in Ex.P-1, such an endorsement is not available in the charge sheet. Thus, it is clear that the prosecution case is not consistent from the beginning. As per Ex.P-1, eight persons attacked the deceased. As per the charge sheet, only four persons attacked. Even that has been given up by P.Ws.1 and 3 in their evidence. Therefore, we are unable to

place any reliance either on Ex.P-1 or on the evidence of P.Ws.1 and 3.

17. Strangely, P.W.2 would state in his evidence that he saw A-1 and A-4 and some other persons stabbing the victim at the place of occurrence. In Ex.P-2 special report given by P.W.2, he stated that A-1,5 and 6 stabbed the deceased. That apart, the contents of Ex.P-2 is inconsistent with Ex.P-1. According to P.W.2, after taking the victim in the Ambulance in order to take him to Hospital, he went to Police Station and complained orally to P.W.17 Sub-Inspector of Police and obtained requisition to go to Hospital. This is the earlier complaint. There is no reason as to why the oral complaint given by P.W.2 was not reduced into writing by P.W.17 before issuing requisition to Hospital. Admittedly, the said requisition has not been marked.

18. Furthermore, P.W.2 did not implicate A-2 and 3, the appellants, either in Ex.P-2 special report or in deposition given before the Court. As a matter of fact, P.W.2 would specifically state that he saw the occurrence along with P.Ws.1 and 3. But, this is not supported by P.Ws.1 and 3, as indicated above.

19. The other evidence which has been let in by the prosecution is the deposition of P.Ws.4 and 5. P.W.4 would state that he came to the scene of occurrence hearing the noise and saw two persons running away. In the identification parade, as is evident from the evidence of P.W.13 Judicial First Class Magistrate, Pondicherry, P.W.4 identified A-2 alone. However, he could not identify him in the Court. According to the other witnesses, four persons ran away from the scene of occurrence. This is quite contradictory. Therefore, we are not able to give any importance to the identification of A-2 in the parade by P.W.4 in the absence of the identification in the Court.

20. The next witness is P.W.5. He would state that on 29-1-1993, he saw A-1 Kuppan, A-2 Ramamurthy and A-3 Natarajan, sitting in Appasamy Flat and conversing with each other. According to P.W.5, when he saw the deceased Kaliyamoorthy coming near the scene of occurrence, he warned him not to come near the accused, as the deceased would invite some trouble. Unfortunately, he did not mention the time at which he saw all the accused and warned the deceased. Though he identified all the accused in the parade, his evidence is not useful, in view of the fact that he had not witnessed the occurrence as admitted by him.

21. The next witness is P.W.6. According to prosecution, he is one of the eye-witnesses. It is his specific stand before the Court that A-2 and A-3 alone stabbed the deceased and ran away. Obviously, the evidence of P.W.6 is against the evidence of P.Ws.2 and 3 and also against Ex.P-1 and Ex.P-2. Furthermore, he did not identify A-3 in the identification parade and he identified A-2 alone in the parade.

22. According to P.W.6, he knew the deceased for about 29 years, as both were residing in the same area, namely Thengathittu. In spite of the fact that he saw the deceased being stabbed and that he knew the deceased for number of years, he did not choose to help the deceased by taking him to Hospital nor to go to Police Station to give complaint about what he saw. On

the other hand, he said that he went to his Mill and came back only next day evening at about 6.40 p.m.

23. P.W.18 did not examine P.W.6 during the course of inquest. Even though P.W.6 would state in cross-examination that he was examined by Police on the date of occurrence, i.e. on 29-1-1993, actually he was examined only on 30-1-1993 evening after the inquest was over, as admitted by P.W.18. There is no material placed before this Court as to how the Police came to know that

P.W.6 also happened to be one of the eye-witnesses. Under those circumstances, we are not able to hold that P.W.6 is a reliable witness and consequently, his evidence also has to be rejected.

24. On going through the other records, it is noticed that the earliest information about the incident was given to P.W.17 Sub-Inspector of Police by P.W.2. As noted above, the same was not recorded by P. W.17. P.W.17 would say that immediately on seeing the condition of victim, he gave a requisition and asked P.W.2 to accompany the victim to Hospital. P.W.14 Doctor who attended the victim, gave Ex.P-15 Medico-legal examination report. It is mentioned in Ex.P-15 that the victim was brought to the Hospital by P.W.2 Police Constable. Unfortunately, there is no reference in the report as to how the deceased sustained injuries--at what time, where and by what weapons, even though P.W.2 is said to be the eye-witness to the occurrence.

25. As indicated above, P.Ws.1 and 3 have not supported the prosecution case mentioned in the complaint with reference to the occurrence, but their categorical version is that both of them chased A-2 and caught him and recovered M.O.8 blood stained knife from them. Unfortunatley, M.O.8 has not been identified either by P.W.1 or by P.W.3, while they were in the witness box. Furthermore, the weapons have not been shown to P.W.15 Doctor to elicit that the same could have been used for causing injuries found on the body of the deceased.

26. The next witness is P.W.16, who speaks about the arrest of A-3. According to him, he saw the occurrence and on noticing that A-3 was running, he chased him and caught him. He stated specifically in the evidence that he saw four persons stabbing the deceased. As indicated above, this evidence is against Ex.P-1 wherein, it is mentioned as eight persons were stabbing the deceased and against Ex.P-2 wherein, it is mentioned as six persons were stabbing the deceased.

27. According to P.W.16, he caught A-3 and recovered knife M.O.7 and produced before P.W.17 Sub-Inspector of Police. With reference to this, Form 95 was prepared, which was marked as Ex.P-21. Even though P.W.16 the Constable, would state that the third accused was arrested with weapon and produced before P.W.17, P.W.17 would not refer to this. On the other hand, P.W.17 in the cross-examination would admit that A-2 alone was arrested and produced before him and not any other accused.

28. As noticed earlier, P.Ws.1 and 3, after arrest of A-2, gave special report which had been treated as Ex.P-1 complaint. Even P.W.2, who saw the occurrence and took the victim to Hospital as per requisition, gave Ex.P-2 special report intimating the incident as well as the death of the deceased. But, there is no reason as to why any muchalika or report had not been submitted by P.w.16 to P.W.17 with regard to the arrest of A-3 and recovery of M.O.7.

29. Furthermore, Ex.P-20 (Form 95), in relation to the recovery of knife from A-2, would show that it was prepared after registration of the case under Section 307 I.P.C. But Ex.P-21 which relates to the recovery of knife from A-3 would show that it was prepared after the death of the deceased, i.e. after the alteration of the F.I.R. for the offence under Section 302 I.P.C. This shows that the third accused must have been produced by P.W.16 in the Police Station only after the alteration of F.I.R. for the offence under Section 302 I.P.C. But, it is the evidence of P.W.16 that he produced the accused before P.W.17, at the same time when A-2 was produced by P.Ws.1 and 3. But, P.W.17 would specifically state that no other accused except A-2 was produced before him. Under those circumstances, we are unable to accept the evidence of P.W.16 with reference to the arrest of A-3 and recovery of knife. Furthermore, as noticed earlier, the so-called eye-witness P.W.6 did not identify A-3 in the parade.

30. This can be viewed from yet another angle. After death of the deceased, the altered report Ex.P-22 had been submitted by P.W.18 to the Court. A reading of Ex.P-22 altered report would show the arrest of A-2 alone. There is no reference about the arrest of A-3 by P.W.16. This also would indicate that A-3 would not have been arrested and produced at the relevant time as mentioned by P.W.16 and he must have been arrested and produced belatedly in the Police Station, that too, after death of the deceased.

31. So, all the above infirmities put together, in our view, would go to the root of the matter, by which we are constrained to hold that the entire edifice of the prosecution gets not proved and therefore, the prosecution has to meet its colossal failure. Consequently, the appellants have to be given the benefit of doubt and hence, they are entitled to be acquitted.

32. Before parting with this case, we cannot but express our displeasure over the conduct of the learned Additional Public Prosecutor (Pondicherry). Learned Additional Public Prosecutor, unfortunately has failed to elicit anything from P.Ws.1 and 3 with reference to Ex.P-1. If actually Ex.P-1 is true, P.Ws.1 and 3 must have stated to the Court in support of the contents of Ex.P-1. Admittedly, they have not chosen to support the prosecution case as mentioned in Ex.P-1.

33. Even though P.W.1, the author of F.I.R. has not supported the prosecution case, he has not been treated as an hostile witness. Further, it is noticed from the records that investigation proceeded on the line that

totally eight persons were involved in the case of murder. As a matter of fact, all the names of eight accused persons have been mentioned in Ex.P-1 and other records. If that is so, there is no reason as to why the case was dropped by P.W.18 Inspector of Police in respect of the other four accused. As noticed earlier, the charge sheet does not contain reasons for dropping the proceedings as against four persons. P.W.18 also had not given any reason before the Court for dropping the case against those persons.

34. Under those circumstances, we direct the Union Territory of Pondicherry to initiate appropriate enquiry and take action against P.W.1 8, the then Inspector of Police who has dropped the case against four persons without any reason.

35. For the reasons stated above, the conviction and sentence imposed on the appellants/A-2 and A-3 are set aside. The appellants/A-2 and A-3 are acquitted of the charges. They are directed to be set at liberty forthwith, unless they are required in connection with any other case. The appeal is allowed accordingly.

Index: Yes

Internet: Yes

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To

1. The III Additional Sessions Judge, Pondicherry.
2. -do- through Chief Judge, Pondicherry.
3. The Superintendent of Central Prison, Pondicherry.
4. The Inspector of Police, Muthaliarpur Police Station, Pondicherry.
5. The Public Prosecutor (Pondicherry), High Court, Madras.
6. The Home Secretary, Union Territory of Pondicherry.

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